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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Revision of Part 22 and Part 90 of the)	WT Docket No. 96-18
Commission's Rules to Facilitate Future)	
Development of Paging Systems)	
)	
Implementation of Section 309(j))	PP Docket No. 93-253
of the communications Act --)	
Competitive Bidding)	

To: The Commission

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COMMENTS OF BORDER TO BORDER COMMUNICATIONS, INC.

Border to Border Communications, Inc. ("BBC"), by its attorneys and pursuant to section 1.415 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"), submits these Comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") in the above captioned proceeding.

STATEMENT OF INTEREST

BBC is licensed by the FCC to provide telephone service to rural subscribers in San Ygnacio and Zapata, Texas along the Texas-Mexico border using Basic Exchange Telephone Radio Service ("BETRS") frequencies in the 454/459 MHz band. The 454/459 MHz band frequencies are licensed on a shared basis with the common

carrier paging service. The Commission proposes in the *NPRM* to auction this spectrum if a BETRS applicant and a paging applicant file mutually exclusive applications to provide service. Because there is a limited amount of remaining spectrum available for use in and along the Texas/Mexico border for BETRS and because subjecting this spectrum to competitive bidding would make such spectrum unaffordable to BBC, BBC has a significant interest in the outcome of this proceeding.

DISCUSSION

I. As previously recognized by the Commission, auctioning BETRS spectrum is not in the public interest.

The Commission notes in the *NPRM* that the paired 152/158 and 454/459 MHz channels are shared by paging and BETRS.¹ The Commission also noted in the *NPRM* that, because of the public interest in extending basic telephone service to sparsely populated areas, competitive bidding should not be used to select between BETRS and Public Mobile applicants.² BBC believes that this policy continues to be appropriate and in the public interest and that the Commission's proposal to subject BETRS applicants to competitive bidding against paging applicants flies in the face of the public interest standard the FCC is bound by

¹ *NPRM* at para. 29.

² *Id.* (citing Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, *Second Report and Order*, 9 FCC Rcd 2348, 2356, ¶ 46 (1994)).

law to uphold.³

BETRS is used by local exchange carriers (LECs) like BBC to provide local telephone service to customers where it is either prohibitively expensive or geophysically impossible to extend landline service. As the carrier of last resort, BBC, an incumbent LEC, has an obligation to offer reasonably priced service to all customers in its service area. Requiring BBC to bid for BETRS licenses would hamstring its ability to fulfill this obligation because of the inherent costs of acquiring the license, especially in light of the FCC's proposal to auction spectrum on a Major Trading Area (MTA) basis. In BBC's case, it would have to purchase the entire San Antonio MTA in order to serve a sparsely populated area in Zapata county -- one of forty (40) counties that make up the San Antonio MTA. Needless to say, the cost of bidding for the BETRS spectrum would be prohibitively expensive if BBC were required to buy the entire MTA. Additionally, requiring BBC to negotiate to partition the MTA either before or after the auction would also prove impractical. It has been BBC's experience that MTA auction winners in the PCS auction have little desire to negotiate geographic partitioning arrangements with small rural LECs who desire to serve sparsely populated remote areas in the MTA. Moreover, even if BBC were

³ See 47 U.S.C. § 151 (creating the FCC "[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges (emphasis added)).

able to obtain the BETRS license through competitive bidding, the cost of the winning bid may force rates for BBC's customers to increase. Thus, by requiring LECs to pay for BETRS spectrum, the Commission would be jeopardizing the nation's most fundamental universal service policy as well as the FCC's goal to increase subscriber penetration.

More significantly, under the Commission's proposal to auction BETRS spectrum, the Commission would be choosing paging service, a lesser needed service in areas where there is not even basic telephone service, over basic telephone service. As a matter of public policy, it is highly illogical to use competitive bidding to decide between two entirely different services, with completely different purposes providing different public benefits. Few would argue that providing basic exchange service to all who desire it is far more essential than the provision of paging service. Up to now, the Commission has never put a price on its universal service policies. Accordingly, BBC strongly urges the Commission to prioritize the public interest above its desire to solve the National deficit by filling the Treasury with money earned from spectrum auctions.

II. The FCC's reliance on new wireless services to provide basic telephone service is manifestly misplaced.

If the Commission were to use competitive bidding to choose between BETRS and paging applicants, and the paging provider won the license, there is no guarantee that a PCS or other wireless provider would provide basic telephone service to these remote

customers. In fact, it seems illogical to believe that PCS providers, who paid large sums for their licenses, will be lining up to provide local loop service to sparsely populated rural markets. In a recent report released by the United States General Accounting Office (GAO), the GAO concluded: "In rural areas, where there are fewer businesses and the cost of delivering service is usually higher, the current profit incentives are generally not high enough for companies to invest in providing [advanced telecommunications services]"⁴ Furthermore, wireless service providers that did choose to provide local service would not necessarily have a carrier of last resort obligation and could pick and choose their customers, leaving remotely located customers without service which is clearly not in the public interest. Accordingly, BBC urges the Commission not to buy into its incorrect theory that other wireless service providers will fill in the void in rural areas.

⁴ See *"Telecommunications: Initiatives Taken by Three States to Promote Increased Access and Investment"* prepared by United States General Accounting Office for Senate Committee on Agriculture, Nutrition and Forestry (March 1996).

CONCLUSION

BBC believes that it is not in the public interest to auction spectrum used to provide BETRS. Revising the rules to require mutually exclusive BETRS applicants and paging applicants to acquire frequencies at auctions will only serve to favor capital-rich companies at the expense of the many established small LECs like BBC who provide basic telephone service using BETRS technology in rural areas. BBC therefore urges the Commission to maintain its current licensing regulations for BETRS.

Respectfully submitted,

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